IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Regular First Appeal No. 48 of 2000.

Judgment reserved on 16.11.2007

Date of Decision: 14th December, 2007.

Kekh Ram and others ***…. Appellants.***

Vs.

Collectotr Land Acquisition HPPWD Kullu,

…..Respondent.

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Dharamvir Sharma, Advocate.

For the Respondents: Mr. Rajan Dewan, Addl. AG,

Dev Darshan Sud, Judge.

This appeal has been preferred by the claimants under Section 54 of the Land Acquisition Act against the award passed by the learned Additional District Judge, Mandi dated 31.3.1998 in Reference No. 40 of 1985/15 of 1987. The appellants are real brothers whose land was acquired by the State. They claimed enhanced compensation in respect to their land and gharat (water mill) which was acquired by the State Government for construction of Kullu Nagar Left Bank Road. The reference Court awarded compensation to the appellants at the rate of Rs. 55,000/- per bigha

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

for the land and water mill, and a sum of Rs. 4000/- as compensation for the damages caused to their gharat. In addition, necessary acquisition charges, solatium etc. was granted to the appellants in terms of the Land Acquisition Act. The claim of the appellants herein for award of compensation @ 70,000/- per bigha was held as having not substantiated, by the learned Additional District Judge. On the basis of the evidence on record and the documents produced, learned reference court awarded Rs. 55,000/- per bigha and on the other claim Rs. 4000/- has been awarded to the appellants.

I have heard learned counsel for the parties and have gone through the record. Learned counsel appearing for the appellants has taken me through the evidence of the claimants before the reference court to prove that the value of the land was not less than 70,000/- per bigha and that the amount requires to be enhanced by sum of Rs. 15,000/- per bigha for each of the claimants. He has referred to the various sale instances which, according to him have been proved on the record. Learned counsel for the appellants submits that the value of the land has not been fixed in accordance with that which was proved on the record. According to him, the evidence was unequivocal that the average value of the land was Rs. 70,000/- per bigha. He place reliance on Ext. CW-1/A and Ext. CW-2/A which are five years average sale worked out by the Patwari for the land adjacent in the neighbouring villages. CW-1 Shri Kehar Singh Patwari has stated in his evidence that Ext. P-7 was prepared on a document already in existence in the revenue office but which has not been produced. The evidence of CW-2 Shri Narayan Singh

Kanungo may be considered. To a court question whether the five years average was prepared in accordance with the prescribed procedure, his answer is "***The panch sala aushat has not been drawn up according to the prescribed procedure***" He also admits that procedure for preparing these documents for departmental purposes and non departmental purposes is the same. In these circumstances Ext. CW/2 cannot be relied upon as furnishing the correct index of the true value of the land. In these circumstances, I hold that there is no justification to interfere with the finding of the learned reference Court holding that the appellants are entitled to compensation @ 55,000/- per bigha. AW-3 Shri Kehar Singh, Patwari Dhalpur, Kullu has admitted in his evidence that this sale was worked out on the basis of the value of the land and the structures standing thereon. No attempt has been made by the appellants to have produced on record any sale deed which was the subject matter of Ext. CW-1/A. Similarly in Ext. CW-2/A is only five years average price. In the absence of the proof of sale deed(s) purported subject matter of CW-1/A and Ext. CW-2/A, the submission made by the learned counsel for the appellants cannot be accepted. In the circumstances, this submission made by the learned counsel for the appellants that the fair market value has not been determined, cannot be accepted. Learned counsel for the appellants submits that the learned reference Court was in error in not awarding compensation for the earning from the gharat (water mill) in terms of Ext. P-1. This submission is noted only to be rejected. Ext. P-1 is an estimate prepared by AW-1 Vijay Kumar which is terse one line document stating only that the

average earning from the gharat (water mill) is Rs. 15/- to 20/- provided it runs on eight hourly shift basis. The memo is reproduced in original:-

"To

Sh. Khekh Ram S/o Sh. Daya Ram,
Village Grahker PO Puid,
Tehsil &Distt. Kullu.

Ind/Misc/80 2386 dated 27.6.1986

Sub: Average Income from Gharat.

Memo:

Ref. your application dated 2.6.86.

The average income from gharat is estimated to be Rs. 15/- to Rs. 20/- provided it runs on 8 hourly shift basis.

General Manager,
District Inndustries Centre,
Kullu"

This document cannot be relied upon for the simple reason because it is the opinion of AW-1 which is not based on scientific study or other material to substantiate the earning capacity of water mill.

In the facts and circumstances of the cases there is no merit in this appeal which is accordingly dismissed. There shall be no order as to costs.

14th December, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**